

EXHIBIT 78

REDACTED

Page 1

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION
4 STATE OF TEXAS, et al,)
5)
6 Plaintiffs,) CASE NO.
7) 4:20cv00957-SDJ
8 v.)
9)
10 GOOGLE, LLC,)
11)
12 Defendant.)
13 -----)

14 -- -- --
15 Wednesday, May 15, 2024

16 -- -- --
17 HIGHLY CONFIDENTIAL
18 PURSUANT TO PROTECTIVE ORDER
19 -- -- --

20 Remote Video-Recorded Oral Fed. R.
21 Civ. P. 30(b)(6) Deposition of GOOGLE LLC BY
22 AND THROUGH [REDACTED] held at the
23 location of the witness, New York, New York,
24 commencing at 9:01 a.m. EDT on the above
25 date, before Michael E. Miller, Fellow of the
Academy of Professional Reporters, Certified
Court Reporter, Registered Diplomat
Reporter, Certified Realtime Reporter and
Notary Public.

26 -- -- --
27 GOLKOW - VERITEXT
28 877.370.DEPS | fax 917.591.5672
29 Job No. MDLG6702271

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14 VIDEOGRAPHER:

15 ZACH HONE

16 Golkow - Veritext

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P R O C E E D I N G S

May 15, 2024, 9:01 a.m. EDT

THE VIDEOGRAPHER: We're now on
the record. My name is Zach Hone.
I'm a videographer for Golkow.

Today's date is May 15th, 2024,
and the time is 9:01 a.m. This remote
video deposition is being held in the
matter of The State of Texas et al v.
Google LLC.

The deponent is [REDACTED]

[REDACTED].

All parties to this deposition
are appearing remotely and have agreed
to the witness being sworn in
remotely.

Due to the nature of remote
reporting, please pause briefly before
speaking to ensure all parties are
heard completely.

Counsel's appearances will be
noted on the stenographic record.

The court reporter will now

1 swear in the witness.

2 -----

3 [REDACTED]
4 having been duly sworn,
5 testified as follows:

6 -----

7 EXAMINATION

8 -----

9 BY MS. PENA-GONZALEZ:

10 Q. Good morning, [REDACTED].

11 How are you?

12 A. Good. How are you?

13 Q. My name is Isabela

14 Pena-Gonzalez. I'm here on behalf of the
15 State of Texas for the law firm Norton Rose
16 Fulbright.

17 Could you please state your
18 full name for the jury.

19 A. Sure. My name is [REDACTED]

20 [REDACTED].

21 Q. And do you understand that you
22 have been designated as a corporate
23 representative for certain topics on which
24 you are testifying here on behalf of Google?

25 A. Yes, I do.

1 BY MS. PENA-GONZALEZ:

2 Q. When were those communications
3 disclosed to publishers?

4 A. I don't know the exact dates.
5 We'd have to look at -- yes, I don't know the
6 exact dates.

7 Q. And you mentioned publishers,
8 so that wasn't disclosed to buyers?

9 A. To my knowledge, DRS was not
10 disclosed to buyers.

11 Q. Okay. And you said, again,
12 that the product was disclosed to publishers,
13 but you didn't mention risks.

14 Were the risks of DRS disclosed
15 to customers, in this case, publishers?

16 MR. McCALLUM: Object to the
17 form.

18 A. To my knowledge, DRS benefited
19 publishers by helping them make more revenue,
20 and that's what we communicated with them,
21 and gave them the option to turn off the
22 feature if they didn't want to use it.

23 MS. PENA-GONZALEZ: Objection
24 as nonresponsive.

25 ///

1 BY MS. PENA-GONZALEZ:

2 Q. I'm going to ask you
3 specifically, [REDACTED] Did Google
4 disclose DRS version 1 to publishers?

5 A. Not that I'm aware of, no. As
6 in specifically version 1, version 2, we
7 talked about DRS as a product.

8 Q. But specifically, DRS version 1
9 was not communicated to the publishers or
10 buyers?

11 A. I don't know about the timing
12 of when we announced, so it would be hard for
13 me to kind of decide -- let you know what
14 happened when. If there's something we can
15 look at that will help me on the timeline.

16 Q. So Google disclosed --
17 depending on the timeline, it's your
18 testimony for the jury that Google disclosed
19 DRS version 2 to publishers?

20 MR. McCALLUM: Object to the
21 form.

22 A. Again, I don't have the
23 timeline memorized. I know we disclosed DRS
24 to our publisher partners.

25 ///

1 BY MS. PENA-GONZALEZ:

2 Q. In those disclosures to
3 partners, did Google differentiate between
4 DRS version 1 and DRS version 2?

5 A. Again, in the timeline, I don't
6 recall if we -- if we differentiated between
7 the two.

8 Q. To the best of your knowledge,
9 right now, today, you cannot tell me whether
10 Google published -- published or verbally
11 communicated any communications to publishers
12 about the distinction between DRS v1 and
13 DRS v2?

14 MR. McCALLUM: Object to the
15 form.

16 A. So to my knowledge, we
17 announced DRS to our publishers. Again, the
18 timeline is challenging. There was a long
19 development timeline on that solution, and I
20 don't know from my recollection that we
21 differentiated between DRS v1 and DRS v2.

22 BY MS. PENA-GONZALEZ:

23 Q. Has Google ever disclosed any
24 risks associated with RPO to customers?

25 MR. McCALLUM: Object to the

1 changes?

2 MR. McCALLUM: Objection,
3 scope, form, privilege, and I'm going
4 to instruct the witness not to answer
5 the question in any way that might
6 reveal the attorney-client privilege
7 or matters covered by attorney work
8 product. If the witness is able to
9 answer the question without
10 referencing any of those matters, he's
11 able -- he's free to do so.

12 A. Sorry, I do not have any
13 information about that. I cannot respond.

14 BY MS. PENA-GONZALEZ:

15 Q. Okay. Let's turn to the --
16 that same box, but below the section that
17 says regulatory risk, it says relationship
18 risks.

19 MS. PENA-GONZALEZ: Can we make
20 that large, please.

21 BY MS. PENA-GONZALEZ:

22 Q. There's two bullets under the
23 title Relationship risks. One says Pubs.

24 Can we assume that means
25 publishers?

1 A. Yes, I see that.

2 Q. And it says: Positive revenue
3 but not experiments not honoring their
4 settings, in parentheses, e.g., clearing
5 below floors.

6 And then second bullet says:
7 Buyers, inflated prices and not behaving as
8 they expect, and in parentheses, e.g., win
9 below given floor, clear at bid.

10 Do you see that?

11 A. Yes, I see those statements.

12 Q. To the best of your knowledge,
13 in the first bullet that says experiments not
14 honoring their settings, what does that mean?

15 MR. McCALLUM: Objection,
16 scope.

17 A. I do not know. I'm not sure
18 what experiments this is referring to, so
19 it's hard for me to respond other than what's
20 on this page. It says clearing below floor
21 prices, so that's what I would assume.

22 BY MS. PENA-GONZALEZ:

23 Q. With respect to RPO and DRS,
24 did Google ever disclose either of the risks
25 cited in these two bullet points?

1 MR. McCALLUM: Object to the
2 form.

3 A. So like I said in the past, in
4 previous statements, for DRS and RPO, we
5 explained on our announcements in our blog
6 posts, as well as in help center, how exactly
7 the product and solutions worked so that
8 publishers knew how that would impact their
9 settings and their businesses.

10 We did not use these words that
11 you have listed. As I mentioned before,
12 changing of floor prices may create a
13 situation where a buyer is paying more
14 because the floor price is going up, as in
15 the case for RPO. But like I said, we did
16 not use these specific words. We did explain
17 how the product solutions work.

18 MS. PENA-GONZALEZ: I'm going
19 to object as nonresponsive.

20 BY MS. PENA-GONZALEZ:

21 Q. Outside of these specific
22 words, did Google ever disclose either of
23 these risks to publishers and buyers?

24 MR. McCALLUM: Object to the
25 form.

1 A. I guess in this case, these are
2 risks -- or these are bullet points in
3 relation to these experiments. I guess I
4 don't know what experiments these are
5 referring to, so I don't even know if those
6 experiments were running on publisher
7 inventory. It's hard for me to answer that
8 we used these bullets or communicated this to
9 our customers.

10 BY MS. PENA-GONZALEZ:

11 Q. For DRS, did Google communicate
12 either of these two points to publishers or
13 buyers?

14 MR. McCALLUM: Objection, form.

15 A. I'm sorry. These -- like I
16 said, these risks are in a document for any
17 number of experiments. I don't know if this
18 was even in the discussion for DRS. If you
19 could show me, I mean, where -- (audio
20 malfunction) --

21 (Clarification requested by the
22 stenographer.)

23 A. Yes. If you could show me
24 something in the DRS document that I can help
25 answer. Like I said, these bullets are part

1 CERTIFICATE

2 I, MICHAEL E. MILLER, Fellow of
3 the Academy of Professional Reporters,
4 Registered Diplomate Reporter, Certified
5 Realtime Reporter, Certified Court Reporter
6 and Notary Public, do hereby certify that
7 prior to the commencement of the examination,
8 [REDACTED] was duly sworn by me to
9 testify to the truth, the whole truth and
10 nothing but the truth.

11 I DO FURTHER CERTIFY that the
12 foregoing is a verbatim transcript of the
13 testimony as taken stenographically by and
14 before me at the time, place and on the date
15 hereinbefore set forth, to the best of my
16 ability.

17 I DO FURTHER CERTIFY that pursuant
18 to FRCP Rule 30, signature of the witness was
19 not requested by the witness or other party
20 before the conclusion of the deposition.

21 I DO FURTHER CERTIFY that I am
22 neither a relative nor employee nor attorney
23 nor counsel of any of the parties to this
24 action, and that I am neither a relative nor
25 employee of such attorney or counsel, and
that I am not financially interested in the



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Dated: May 16, 2024